

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
SEPTEMBER 26, 2005**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, September 26, 2005 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:00 p.m. The following members were present: Chair Hugh Holston, Sandra Anderson, Ann Buffington, John Cross, Jim Kee, Russ Parmele and Rick Pinto. Bill Ruska, Zoning Administrator, Zoning Inspectors Ron Fields and Barry Levine, and Clyde Albright, Esq., from the City Attorney's Office, were also present.

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method for appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Ms. Buffington moved approval of the August 22, 2005 minutes as written, seconded by Ms. Anderson. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

Mr. Ruska was sworn in as to all testimony given by him for matters on the agenda.

CHANGES IN AGENDA

Mr. Ruska said staff had received a request for continuance of BOA-05-40, 3608-B West Wendover Avenue. Staff received a letter from the attorney, Edward F. Siegel, asking for a continuance.

Ms. Buffington moved that BOA-05-40, 3608-B West Wendover Avenue, be continued until the next meeting, seconded by Mr. Pinto. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

Norman Smith, Esq., represented the property owners at 801 Merritt Drive, Carl Johnson and his Trust. Charles Melvin is their zoning attorney and Mr. Melvin has been working to try to get this situation into compliance. There is, indeed, a plan that has expired and the plan needs to be modified to accommodate the present use of the property. It is an old industrial site and his client had been selling recreational vehicles there on the supposition and belief that he had the right to do so. However, this appears to be in technical violation. They would like to get a 60-day extension. They thought no interests were affected other than those of the City in enforcing its Code.

Mr. Ruska confirmed that he had had a couple of discussions with Mr. Melvin about filing such a plan. If such a plan is filed and approved, then this Notice of Violation would go away.

There was no one present in opposition to the continuance. Ms. Anderson moved that BOA-05-38, 801 Merritt Drive, be continued for 60 days, seconded by Mr. Pinto. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

OLD BUSINESS

APPEAL OF NOTICE OF VIOLATION

(A) BOA-05-31: 2627 STRATFORD ROAD - FAINA BOCHKIS APPEALS A NOTICE OF VIOLATION IN REFERENCE TO A HOME OCCUPATION NOT OPERATING UNDER THE CURRENT REGULATIONS IN REGARDS TO HAVING MORE THAN ONE COMMERCIAL VEHICLE AT THE LOCATION. CONTINUED FROM THE AUGUST 22, 2005 MEETING. SECTION 30-5-2.47, PRESENT ZONING- RS-9, BS-51, CROSS STREET-DAVID CALDWELL DRIVE. (CONTINUED 30 DAYS)

Mr. Ruska stated that Mikhail and Faina Bochkis are the owners of the property located at 2627 Stratford Drive. The lot is located on the western side of Stratford Drive south of David Caldwell Drive on zoning map block sheet 51. This case was continued from the August 22, 2005 meeting. The lot is currently zoned 9. The Zoning Enforcement Office received a complaint from a citizen on May 24, 2005, in reference to the property at 2627 Stratford Drive. The complaint alleged the property was in violation of the home occupation regulations in regards to too many commercial vehicles being parked on the residential property. Zoning Enforcement Officer, Ron Fields, made a site inspection and found approximately three ice-cream trucks in the driveway. (Attached is a picture of the trucks on the property). The property owner was issued a Notice of Violation on June 3, 2005 for violation of Home Occupation Regulations. In reference to Section 30-5-2.47(D)(7), **Home Occupations, Operation:** "One (1) commercial vehicle, which shall not exceed thirty (30) feet in length, may be allowed in conjunction with the home occupation." On June 16, 2005, the applicant appealed the Notice of Violation. The property owner rents the property and the tenants are licensed through the City Privilege License Division as itinerant merchants for Southern Ice Cream Corporation. The adjacent properties are also zoned RS-9.

Chair Holston opened the public hearing.

Dajan Assaf, 2627 Stratford Road, was sworn or affirmed. He said the motor vehicles were not parked on the street; they were parked next to the house. His neighbor felt it did not look good to have three ice cream vans parked next to the house. He said they later became friends and everything was okay now. They have just found a new house in Oak Ridge, which is a remote farm, so there would be no problem with the vans. However, it will be three weeks before they can move. He asked if there was a possibility for the situation to stay as it is for another three weeks. Then they can move into their new location. The vans cause no danger because you cannot see them from the street.

Mr. Pinto asked if Mr. Assaf would have any objections if the Board decided to continue this matter until its next meeting, which would be more than three weeks from today?

Mr. Assaf said, from his perspective, he would have no objection to the continuance because he just needs three weeks to clear this up. If he needs to move the trucks now, he has nowhere to move them.

Mr. Kee asked Mr. Ruska if he would have an objection to allowing Mr. Assaf to move the trucks in three weeks? Mr. Ruska responded that they would like the Board to uphold the Notice of Violation.

Mr. Parmele asked Mr. Ruska if the consequence of upholding the Notice of Violation for the property owner would be either to immediately move the trucks or pay a fine? Mr. Ruska responded that that was correct.

Mr. Ruska explained that the only way you could have a commercial vehicle on your property would if it were in conjunction with the home occupation and they allow one vehicle on the property, just as the fact sheet says. He said they could park the trucks on the street and not be in violation, as long as the street was signed appropriately for parking.

Mr. Assaf said he did not want to park the trucks on the street because they were open trucks with ice cream inside. There they were susceptible to children entering the trucks and taking the ice cream. Also the trucks are plugged into electricity at night.

Inspector Ron Fields, 4005 Landerwood Drive, previously sworn or affirmed, said there were no "No Parking" signs. They have had complaints in the past concerning residential property where there was a commercial business or home occupation. He said on May 24, 2005 one of the residents called and complained about the three vehicles parked at the residence and felt that her rights were being violated. He went out to the property several times and then saw the vehicles parked on the property so he took the photos that the Board has in front of it. They have had no other complaints except for the one neighbor.

Mr. Cross said, knowing Mr. Ruska's objections, he was inclined to grant the continuance with the understanding that at the end of the continuance, the trucks would have been moved. Otherwise, he would be penalized.

Thereupon, Mr. Cross moved that BOA-05-31, 2627 Stratford Road, be continued for 30 days to be heard at the next Board meeting. He would hope Mr. Assaf would withdraw his appeal before the next meeting. Mr. Pinto seconded the motion. The Board voted 6-1 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Pinto. Nays: Parmele.)

NEW BUSINESS

SPECIAL EXCEPTION

(A) BOA-05-35: 205 STOCKTON WAY - HENRY BALDWIN REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A SEPARATION OF 510 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. PRESENT ZONING-CD-RM-12, BS-205, CROSS STREET-OLD TREYBROOKE DRIVE. (APPROVED – WITH CONDITION)

Mr. Ruska said that Carroll Investment Properties, Inc. is the owner of the property located at 205 Stockton Way. Henry Baldwin and Danna White are the applicants requesting a Special Exception. The lot is located east of Randleman Road north of Old Treybrook Drive on zoning map block sheet 205. The property was developed in 1998. The site plan on file indicates this was Phase 1, which contains 230 multifamily apartments. The applicant is requesting a Special Exception as authorized by Section 30-5-2.37(B) to locate a proposed family care home (6 or less persons) 510 feet from an existing family care home (6 or less persons) instead of the required spacing of 1,320 feet. This location will not meet the spacing requirement by approximately 810 feet. This measurement is established from property line to property line. The existing family care home is located at 203 Hammond Street, which is located east of the proposed family care home. There are several apartment buildings and 2 streets that separate the homes. Attached is a copy of an updated report for Board of Adjustment Special Exception requests for family care homes

from January 2,000 through August 2005. The property is zoned CD-RM-12. The adjacent property located to the west is zoned CD-SC, the adjacent property located to the north is zoned RS-30, and the adjacent property located to the east is zoned RS-9.

Chair Holston opened the public hearing.

Henry Baldwin, 11 Lakepoint Court, was sworn or affirmed. The property in question is the home of Ms. White. Since the person she is accepting into her private home falls under the guideline for a therapeutic foster care, she has to apply to the State for a required license to have such a person living in her home. This is actually an individual and not a group home setting. The person who will come to live with Ms. White has been transferred from group home to group home. Ms. White has formed an attachment with her and would like to provide a stable home environment for this 16-year old female. Services rendered by Ms. White would not be nursing, but more like fostering.

Mr. Ruska explained to the Board the reason for the 1,320-foot distance between facilities.

Mr. Cross asked if a condition could be put on the Special Exception stating that only one person needing care could be house in this particular instance? Mr. Ruska said that could be done by the Board.

Ms. Anderson said this appeared to her to be a win/win situation. She said it made real sense to her that there was a 16-year old girl who needs a place to stay, a permanent home, and someone was willing to provide that for her so she could finish her last two years of high school and be in the same place.

Mr. Pinto said the solution seemed to be limiting the home to only one person and the reason and rationale for the separation would not come into play.

Mr. Baldwin added that Ms. White's home is a three-bedroom apartment, not a freestanding home.

Ms. Anderson moved that the Special Exception requested be granted in that it is in harmony with the general purpose and intent of this ordinance and preserves its spirit because she is giving care to one child in her home and she believed that the same rules for granting this be allowed to her as anyone else. The granting of this Special Exception assures public safety and welfare and does justice because there is no harm to anyone and it is a good thing she is doing. This motion failed for lack of a second.

Ms. Buffington said, based on the stated findings of fact, she moved that the Zoning Enforcement Officer be overruled and the Special Exception be granted, subject to the following: That there should be only one person living in the home who needs the therapeutic treatment; That this Special Exception shall be in force as long as the applicant is the occupant of the apartment for which this Special Exception is granted and the person needing therapeutic treatment is in her care. Mr. Pinto seconded the motion. The Board voted 6-1 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Parmele, Pinto. Nays: Anderson.)

(B) BOA-05-36: 2438 RANDLEMAN ROAD - MICHAEL HORLICK REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-5.15 TO RETAIN THE WALL SIGNAGE THAT HAS ALREADY BEEN REPLACED IN RELATION TO AN ESTABLISHED NONCONFORMING USE. PRESENT ZONING-HB, BS-70, CROSS STREET-FARRAGUT STREET. (APPROVED)

Mr. Ruska stated that Michael Horlick is the current owner of the property located at 2438 Randleman Road, which contains I-40 & Randleman Road Video and News. The lot is located at

the northwest intersection of Randleman Road and the ramp for Farragut Street on zoning map block sheet 70 and is currently zoned HB. The property contains a nonconforming Sexually Oriented Business, an Adult Bookstore or Adult Video Store which is defined in Section 30-2-2.7(2): "A commercial establishment which as one (1) of its principal business purposes offers for sale or rental, for any form of consideration, any one (1) or more of the following: Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities and/or specified anatomical areas; or Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities." The business also offers mini-motion picture viewing. The use is nonconforming because it is within 1,200 feet of another Sexually Oriented Business that is located on Farragut Street. It is approximately 500 feet between the two businesses. The separation is measured from property line to property line. The applicant is requesting a Special Exception in reference to having changed the front wall signage prior to obtaining a Special Exception, as required by Section 30-5-5.15. This Section states: "New signs relating to a properly established nonconforming use may be permitted if such signs comply with the requirements of this Article and a special exception is granted by the Board of Adjustment." The wall sign was changed on the front elevation. The new sign is internally lit and meets the wall sign specifications in reference to the current sign requirements. A Notice of Violation was issued to I-40 & Randleman Road Video and News. The applicant was instructed to apply for and obtain a Special Exception for the new signage that was recently installed.

Chuck Bell, 2607 Mackinaw Drive, was sworn in and said he received a phone call to look at the new sign. He had not thought of the business in the same category as massage parlors and topless bars, etc. However, what did strike him was the fact that about one-third of the sign face had cracked and blown off. Upon a closer look at that sign, which is the same size as is there, the construction that was up there was wood 2X4 frame with a Plexiglas pan face on it. A third of the sign was gone due to the rotten wood and the fixtures were mounted directly to the roof or fascia and it had the wood frame around it and then screws holding the face. His first thought was, "Somebody is going to get hurt." After discussions, they got the sign built. While changing the sign, the ownership of the building had changed and he had sold it to Mr. Cvijanovic. Under the old policies, the salesman always got the permit. In making the company more streamlined, he had an individual take over getting the permits. However, that individual thought he had got the permit, while he thought she had got the permit and the sign goes up with no permit. The mistake made was in not procuring the permit. Over the years, his had been one of the few companies very supportive of the ordinances and codes and working with the individuals involved.

Vince Cvijanovic, 1783 Deer Run Court, Oak Ridge, was sworn in and added that, as the new owner of the business, he did take responsibility for not having the paperwork taken care of properly. When they found out about the violation, he went downtown to the Zoning Office immediately to find out what was going on and what needed to be addressed. That was when they started the process to get the Special Exception. He apologized for not getting the permit in advance and said they had instituted an additional policy internally to address this so it does not happen again.

Mr. Bell said the new sign was the same size as the old one; it was illuminated and basically said the same thing. To clarify the mistake, they should have come before the Board prior to authorizing and getting the sign.

There was no one present to speak in opposition to the request.

Mr. Cross said in the matter of BOA-05-36 at 2438 Randleman Road, he moved that the findings of fact submitted to the Board be incorporated into the record by reference and that the Zoning Enforcement Officer be overruled and the Special Exception granted based on the fact that the

Exception does appear to be in harmony with the general purpose and intent of the ordinance and preserves its spirit, assures public safety and welfare and does substantial justice due to the fact that this property is a properly established nonconforming use and that the sign otherwise complies with the ordinance requirements, as well as the fact that this sign is nothing other than a safer version of the prior sign, it is not any larger nor made any differently, other than in a safer manner which certainly lends itself to the public safety and welfare aspect. Mr. Parmele seconded the motion. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

APPEAL OF NOTICE OF VIOLATION

(A) BOA-05-37: 237 SOUTH ELM STREET - DAVID HILL APPEALS A NOTICE OF VIOLATION IN REFERENCE TO AN OUTDOOR ADVERTISING SIGN (BILLBOARD) WHICH IS PROHIBITED IN THE CENTRAL BUSINESS ZONING DISTRICT. SECTION 30-5-5.6(H)(3), PRESENT ZONING-CB, BS 1, CROSS STREET-EAST WASHINGTON STREET. (CONTINUED 30 DAYS)

Mr. Ruska stated that David & Judith Hill are the applicants appealing a Notice of Violation at 237 South Elm Street. Now Marketing and Design Marketing is located across the street at 301 South Elm Street. The applicant uses projection to show various advertisements on the exterior wall of the building at 237 South Elm Street. The advertisements are seen from the intersection of South Elm Street and Washington Street. The projected images and backdrop is considered to be a sign and this type of signage is not permitted, because it functions as an outdoor advertising sign or billboard. Section 30-2-2.11: Outdoor advertising sign (billboard): "Any sign which directs attention to a business, commodity, service, entertainment, or attraction sold, offered, or existing elsewhere than upon the same zone lot where such sign is displayed. In lieu of a commercial message, any otherwise lawful noncommercial message may be displayed." The Central Business Overlay Zone, (Section 30-5-5.6(H)), includes all land within the city limits which is located within a one and one-half (1½) mile radius measured from the center point of the intersection of Market and Elm Streets. The purposes of the Central Business Overlay Zone are to protect and preserve the aesthetic appearance of the lands surrounding entranceways into the center City and to promote traffic safety in those areas of the City which are especially congested with local traffic entering into and exiting from the central business district of the City. According to subsection 30-5-5.6(H)(3), all new outdoor advertising signs are prohibited within the Central Business Overlay Zone. The applicant was issued a Notice of Violation on July 22, 2005 for use of prohibited signage in the CB district. The applicant was instructed to cease the practice of projecting images on the screen or wall of the building at 237 South Elm and to remove the screen on the wall of the building. Each BOA packet contains examples of graphics that are shown on this wall elevation. The graphics clearly advertise for off-premise businesses.

David Hill, 233 South Elm Street, was sworn or affirmed. He said the images were projected onto the side of this building over their employee parking lot, which they say is 237 South Elm Street. He said he was asking for a continuance on this matter. This is a project that was initiated by Action Greensboro and Downtown Greensboro, Inc. DGI is working with the Planning Department now to get some clarification on what they need to do to continue to do this. Therefore, he would like to ask for a 30-day continuance. The advertisement is in relation to the public service announcement and is really a very small percentage of it.

Mr. Ruska said to his knowledge there had been one discussion between the executive director of Downtown Greensboro, Inc., and Dick Hails, the City's Planning Director. There is no text amendment to the ordinance currently that has been prepared. He was not certain at this stage that any resolution of this matter would be reached in 30 days. Chair Holston said if the Board did not grant the continuance, but elected to hear the matter and

denied the applicant's request, they could then come back in 30-60-90 days and re-request to project these advertisements; correct? Mr. Ruska said if the Board denied it today, then they would be prohibited from projecting signs unless and until an amendment to the text was made that would somehow allow this to occur.

Mr. Parmele said a lot of innovative and creative ways to market an advertisement were emerging. While some of the codes don't currently accommodate that, it might be worth 30 days to see if there is a creative way and these folks should be afforded that opportunity. Ms. Anderson said she agreed with that.

Mr. Hill said he only owned the building. He did not own the vinyl screen or the projection equipment. DGI had come to him, asking if they could use the side of his building to promote Downtown Greensboro. He had said yes, but made no charge for the use of the side of his building. When he received the Notice of Violation, he immediately contacted DGI and Action Greensboro because, as he had said, this was one of their projects.

There was no one present to speak in opposition to the request for continuance.

Ms. Anderson moved that the Board continue BOA-05-37, 237 South Elm Street, for 30 days, seconded by Ms. Buffington. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

(B) BOA-05-38: 801 MERRITT DRIVE - CARL JOHNSON APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF THE PROPERTY FOR RECREATIONAL VEHICLE SALES. THE APPROVED UNIFIED DEVELOPMENT PLAN DID NOT INDICATE THE SALE OF RECREATIONAL VEHICLES AS AN APPROVED USE ON THIS PROPERTY AND THE APPROVAL PERIOD FOR THIS PLAN HAS EXPIRED. SECTIONS 30-4-3.3 & 30-4-3.4, PRESENT ZONING-CD-PDI, BS-76, CROSS STREET-SPRING GARDEN STREET. (CONTINUED 60 DAYS)

BOA-05-38 was continued at the beginning of this meeting.

Chair Holston declared a five-minute break.

(C) BOA-05-39: 3001 HOLTS CHAPEL ROAD - SALVAGE AMERICA, INC. APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF THE PROPERTY FOR A SALVAGE AND SCRAP YARD. THIS USE REQUIRES A SPECIAL USE PERMIT. TABLE 30-4-5-1, PRESENT ZONING-HI, BS-15, CROSS STREET-EAST MARKET STREET. (DENIED)

Mr. Ruska stated that Salvage America, Inc., is the owner of the property located at 3001 Holts Chapel Road. The lot is located on the north side of Holts Chapel Road south of East Market Street on zoning map block sheet 15. The lot is currently zoned HI. The applicant was issued a Notice of Violation on July 21, 2005 for operating a salvage and scrap yard in the HI zoning district without a Special Use Permit. The applicant was instructed to cease use of the property and obtain a Special Use Permit. On August 5, 2005, the applicant through his attorney, Marc Isaacson, appealed the Notice of Violation. On February 8, 2005, Greensboro City's TRC approved a site plan for the property, which consisted of 5.16 acres to be developed as a Recycling Transfer Center. There was not enough information on the plan that indicated the property would be used as a salvage and scrap yard. If this information had been disclosed on the site plan, then the procedure would have been to inform the applicant to apply for a Special Use Permit. Enclosed in each packet are pictures of the property that were taken in July 2005. Attached are updated

pictures that were taken on September 22, 2005. The adjacent properties are also zoned HI. He then explained to the Board members what they had in their packets as part of this case.

Chair Holston opened the public hearing.

Marc Isaacson, Esq., 101 West Friendly Avenue, was sworn or affirmed and represented the applicant. He handed up materials to the Board members for their consideration. He said Salvage America was leasing the property and does not own the property. Nevertheless, they have received the Notice of Violation and have appealed it. He thought they were properly before the Board as far as the Notice of Violation is concerned. He then went through the contents of the materials handed up to the Board. For the record, he referred the Board to the third page of the handout at attachment 2, at item M are market confirmation letters and they are from four different companies: Environmental Recycling Alternatives and those are for wood chips and dimensional lumber, Atlantic Scrap and Processing for iron, steel, copper-based items, aluminum-based items, stainless steel and electric motors, from Sunoco for cardboard and paper and from Page Construction for concrete block, brick, roofing shingles, dimensional and treated lumber. The permit is limited by DEHNR to Salvage America. The permit is limited for him to accept at this property those specific materials and to recycle them. Those four companies are required under this permit with the State to buy those materials from his company. Neither you nor I could walk onto the property and buy any of the materials at retail or wholesale. These four companies are the ones that are strictly limited to his customers and are the ones that come on his property regularly and buy on a regular basis the materials that are identified in this permit from the State. There are also numbers of conditions under which he must operate. He then pointed out the differences between a recycling business as defined by the State and salvage yards as defined by the City. He went through and explained some of the photos submitted.

Chris Triolo, 709 Tarhill Road, Kernersville, NC, explained the nature of his business. Materials that do not fit into the several categorizies mentioned by Mr. Isaacson then go to the landfill. To piggyback on what Mr. Isaacson had said, those were letters of intent that we do utilize those companies. They can use other companies like Stateline or other companies interested in their product. They send a truck to the landfill daily. Cardboard moves daily or every other day, steel moves once a week, vinyl moves probably once a week, etc. He said pricing was very fluid and depended on the market and whether or not the buyers use his containers or bring their own.

Mr. Isaacson said, as far as the City Code is concerned, they think it fits better as a recycling center into that description than it does into the salvage yard definition. The DEHNR description is really the governing guideline here.

Mr. Ruska said that 30-5-2.675 pertains to the LI district. He gave the Board that part of the ordinance because he thought this would come up and the Board would want to know where the term "recycling processing center" came from and what it was meant to apply to. That does not apply to the HI district. He then gave the history of how and why the text amendment was done to the ordinance to create a recycling processing center. As far as he knew, they only had one recycling processing center within the City Limits and that is the City's facility since normally they would call an operation such as this a salvage yard.

Mr. Parmele said to him, recycling meant that you were taking items in, separating them, repackaging and sending them out. The note says there was not enough information on the plan to indicate the property would be used as, in the City's opinion, as a salvage and scrap yard. So he thought the debate came down to indeed what is a recycling facility. He thought they were recycling. He thought the issue arose because they were not recycling those things that we all think of as recyclables. How do you determine the items that are to be recycled? Clearly in the City's opinion, they need to get a Special Use Permit, which does not sound like that would be a huge hurdle or obstacle to get by, you just have to clarify it. He thought clearly they were recycling.

It is just that they are recycling items that typically are heavy industrial that are also found in a salvage yard.

Mr. Pinto said even if they are recycling, the Statute requires that there is no outside storage and it looks like from the pictures the Board had seen that there is a lot of outside storage going on and everything has to be operated within an enclosed building. It looks like there is no enclosed building where the operation is going on. So even if you are a recycling center and not a storage place, you are still in violation of the ordinance.

Mr. Holston said you could have it in LI and he thought you could also do it in HI. However, he did think that you had to read the other requirements that say "no outside storage" and the operation has to be in a wholly enclosed building. If you want to buy into the definition of a recycling process center, you have to buy into those limitations.

Ms. Anderson said she thought this was an innovative, entrepreneurial business and her guess would be that he would be having competition in some of the areas and maybe all of them. There is a real need in the construction industry to do something with the leftover materials.

Mr. Isaacson submitted that the issue of outside storage is sort of a vague term and if Mr. Triolo's operation has outside storage, then he would submit that the City's recycling center has outside storage. They had visited the City's recycling center and saw that there were items stored outside for some period of time. Not everything was handled within an enclosed building.

Mr. Parmele asked what hardship would be placed on the business owner if he applied for a Special Use Permit?

Mr. Isaacson said if the Board determines that, or you reach a determination that this isn't exactly a salvage and scrap yard and is the recycling processing center, that you continue this matter for a little while to allow them time to apply for a Special Use Permit so that at least there is an open door here so that Mr. Triolo doesn't get completely closed by the City from operating the business. Applying for a Special Use Permit is a political process. It is an application to the Zoning Commission and maybe to the City Council for granting of a Special Use Permit where there are specific findings of fact that need to be made and it is probably a 60 to 90 day process from today.

In summary, Mr. Isaacson said first he thought the Board had identified the issue very well. He wanted to make sure that the Board did not hold Mr. Triolo's selection of a name against him. He chose the name "Salvage America." He did not think you could ascribe to the name a specific operation under the definition of the City ordinance. He said there were two descriptions under the ordinance. One is a recycling and processing center; one was a salvage and scrap yard. He contended that the more applicable is the recycling and processing center, not the salvage and scrap yard. Look at the verbs used in the respective descriptions of what is going on at the grounds at the property. He suggested that the Board apply the more restrictive description, which is the recycling and processing center. He thought the City ordinance should be interpreted using what the courts call "it's plain meaning." He asked the Board to consider that, as well as the intent in the definitions. The actual owner of the property is Continental Company, LOC.

Inspector Barry Levine, City of Greensboro Zoning Enforcement, said he had some pictures of FCR from the inside. He did not know which photos the Board members got. The pictures show the workers actually sorting. He had some pictures of the outside of the building as well. He also had pictures of Salvage America. He presented those for the Board's consideration.

Counsel Albright said this recycling definition, he thought, was developed in addressing household items, bottles, cans and those types of things. The material that this gentleman is sorting and

selling is new construction waste, which does have a value and does a service to the City because the City doesn't have to haul it off. He thought Mr. Isaacson was right. He thought they should apply for a Special Use Permit since this is the type of thing that could be addressed and maybe the City should look at the ordinance and add a definition for construction recycling.

Harvey Gordon, 9 Provence Court, was sworn or affirmed. He said he owns the property adjacent to and east of Salvage America that is owned by Fairgreen Partnership. He also owned the prior company that was located there, Hot Wax Candle Company, until they closed about a year ago. That business employed over 100 people. He read a statement to the Board. He is the managing partner for Horizon Partners, LLC, and he is here today to oppose the granting of the appeal and the Special Use Permit to Salvage America and/or its property owners. Their property is located at 3501 Holts Chapel Road and is next door to the appellant's property. Their property is 15.79 acres with improvements consisting of 136,526 feet of ready-to-go manufacturing space, all located on a single level of which 9,086 square feet is office space. Their properties are located on a quiet street with nearby businesses that are quiet, neat and well managed. A side street directly opposite the appellant's property, Camel Street, contains mostly single-family housing. What started out as a single, small Bobcat-type steel loader has in recent months escalated to a full-blown salvage and scrap operation with large, diesel powered hydraulic excavators with demolition jaws attached that noisily crush and smash the debris onto the ground, into transfer trailers and into roll-off containers. The property also has large unsightly piles of debris that extend up to 30 feet into the air.

They have several million dollars invested in Horizon Properties, LLC, which is currently for sale or lease. On Friday, September 23, 2005 he placed himself in the office area of their property, which is next door to the appellant, and he could easily hear the noise from Salvage America, Inc., and it was annoying. They have presented their building to multiple economic development agencies, both in and outside the Greensboro area, and are positioning as a lower cost alternative to more expensive properties located in the airport area. Since Salvage America's illegal activities began, interest in their property has dropped to near zero. It is clear that the value of their property is being substantially injured by the appellant's operation that will cause their partner members financial injury that they can ill afford. The appellant's intended use of the property is not in harmony with the area. He was president and owner of a salvage scrap yard from 1985 until 2003 named Meyers Brothers, Inc., which was located at 3303 Spring Garden Street at the former railroad roundhouse landmark next to the former Cotton Square Mall on Merritt Drive. He considers and presents himself today as an expert in this field and he said he could truthfully say from his own total of 30 years in that field that there are no restrictions, i.e., fencing, stipulations or conditions that would adequately mitigate the negative impacts on the surrounding property owners and the surrounding area.

He said he was glad to hear that they did their due diligence because the information that they needed to understand the legality of the operation was so easily obtainable. They ask that all applicable remedies be evoked under Article XIII, Section 30-8-4 of special considerations to Part 1, Part 2 and Part 7. Prior to the appellant's purchase of this property, he approached them about purchasing their property and he shared with them the enclosed building in which to dump material. Their building was not suitable as the ceilings were too low. The appellant was also looking at his currently leased property along with the property directly behind him known as the H.P. Ford Company, which does have a suitable high ceiling building. When he was unable to purchase that property, he shared with them that he would then be erecting a building on his now owned property. The appellant is a sophisticated business owner and investor and knew that his current business as operated was in direct violation with the zoning laws. However, due to the need to begin operations quickly or for whatever reasons, the appellant deliberately and flagrantly disregarded the zoning laws of the City of Greensboro to the detriment of the surrounding area. He said he had been an entrepreneur all of his life. He admired this gentleman for his get up and go. He himself was an undereducated person and the little that he has today was not acquired

through brute force. However, someone's desire to become an entrepreneur does not give them permission to begin that operation just anywhere. He would ask the Board to consider the comment, "Let's get something going in that area" probably is not in the best interest of all the surrounding property owners. He handed up materials to the Board. He gave more history of his employment in related businesses and said he would be happy to answer questions. He felt they would have to do more than split hairs here to say that Salvage America is not a scrap yard by true definition. He showed and explained some pictures that he had recently taken.

He said the area continues to enjoy a rejuvenation of sorts. Holts Chapel Road intersects East Market Street immediately in front of the P. Lorillard cigarette plant. Recently on that corner, a dilapidated metal building was torn down and a beautiful combination gasoline pump/convenience store/food court/laundromat and some other stores was just built. He said Salvage America is clearly a scrap processor, a recycler and a salvage yard, and clearly is out of compliance with the use on the property. Should he request a Special Use Permit, they will strongly oppose it. They expect the impact to them to be minimally in the hundreds of thousands of dollars, if not a million dollars, to his partners and him if this operation is allowed to continue to exist there.

Ms. Anderson and Mr. Gordon discussed the various businesses in the area and the noise and unsightly factors involved. She said she could not see why Salvage America would impact the sale of his property as much as a million dollars. He replied that the interest in their property had gone to zero since they escalated their operation. They were getting about four calls a month and four visits a month to their property. They have not had a single visit to the property in eight weeks. Ms. Anderson said there was a company directly across from her office and then there to the left there is a huge building with a lot of acreage that has been on the market. She had been over there since 1991-92 and she thought that had been empty the whole time she had been there. She just did not think there was a tremendous demand for property generally in that area.

Mr. Kee said he was a resident and entrepreneur of Northeast Greensboro. He could not support a salvage yard in this area. Even though he is not close to it, it is still Northeast Greensboro and it is not something that the residents would welcome.

There was a discussion between Board members and Mr. Gordon concerning the former business that he had owned or operated and which of those could have been operated in a contained building.

Speaking in opposition, Don Fentress, 3400 Holts Chapel Road, was sworn or affirmed. He said his business was Carolina Door and Hardware. They have been and are being affected by this business since it was an outside operation with a lot of dust. He was a distributor for architectural wood doors and they do not like dirt. We also had some trouble with the noise. One of the worst problems was the unpaved street and unpaved, ungraveled lot. It was a grass field when they moved in and now the grass has worn out. There is still dirt lying in the street from the last rain we had and you know when that was. He had been there 15 years. He took a census before he left. Between employees and company vehicles, they have had about five flats from trash in the street since they opened. It is an outdoor operation and it should be indoors since it is causing too many problems being outdoors.

Speaking in opposition, Joe Rodgers, 3115 Carrboro Drive, was sworn or affirmed. He represented the Armed Forces Retirees' Club (AFRC) at 200-208 West Camel Street directly across the street from where American Salvage is built. The members of the club all have 20 or more years of military service. They are all getting up in years. The traffic from the trucks coming in and out of this site definitely presents a hazard to them. It will also devalue their property there. They were trying to improve that community and this will not help.

Ms. Anderson said she had an office building in Northeast Greensboro, as well as several communities. She also cared about what happened in that area.

Several of the other Board members expressed their opinions as to whether this was a salvage and scrap yard or a recycling processing center, as well as the remedies to be taken if it were one or the other.

Mr. Cross said in the matter of BOA-05-39 at 3001 Holts Chapel Road, he moved that the Zoning Administrator's findings of fact be included in the record by reference and that the Zoning Enforcement Officer be upheld. Mr. Parmele seconded the motion. The Board voted 6-1 in favor of the motion, thereby denying the appeal. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele. Nays: Pinto.)

(D) BOA-05-40: 3608-B WEST WENDOVER AVENUE, VENUS THE UNIQUE BOUTIQUE INC. APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF THE PROPERTY FOR A SEXUALLY ORIENTED BUSINESS. SECTIONS 30-5-2.7(3)(A)(B), 30-5-2.73.5(A)(1), AND CONDITIONAL DISTRICT HB #2952, PRESENT ZONING-CD-HB, BS-115, CROSS STREET-CAMANN STREET. (CONTINUED 30 DAYS)

BOA-05-40 was continued at the beginning of this meeting.

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There being no further business before the Board, upon motion by Mr. Cross, seconded by Mr. Pinto and unanimously passed, the meeting was adjourned at 5:10 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/ts.ps